

ADEPT

Legal Commentaries

Quality revision of "conditions of political  
consensus"

Sergiu Grosu, April 1, 2007

## **I. Revision of the Parliament's Regulation**

Fifty-eight parliamentarians representing the Party of Communists of Moldova (PCRM) and the Christian Democratic People's Party (CDPP) adopted on March 23 a law on modification of Article 82 of the Parliament's Regulation, which was tabled (on March 19) by Communist Deputy Victor Stepaniuc and CDPP lawmakers Iurie Rosca and Stefan Secareanu. The law adopted concomitantly in two readings modified Article 82 (2) of the Parliament's Regulation and stipulates that plenary sittings of the Parliament, except for secret sittings, *may be broadcasted live by national radio and television in compliance with the Broadcasting Code or at the Parliament's initiative, under a decision of majority of present lawmakers.*

This draft was adopted with violation of the Parliament's Regulation (Law 430-XVI from 27.12.2006, enforced on 23.03.2007), Art.63/1 which stipulate that:

- the draft law is delivered to the appealed commission or other competent commission after it is debated in the first reading, in order to examine amendments of lawmakers, objections and proposals of parliamentary factions, permanent commissions, decisions of Government, legal directorate of the Parliament's Apparatus, as well as proposals of civil society representatives and to present a report;
- lawmakers, permanent commissions and parliamentary faction may raise amendments to the appealed commission within 10 days after the draft was passed in the first reading, during preparation of the draft for debates in the second reading;
- developers of amendments may take part in the sitting of the commission in charge with finalising the draft law. The commission will inform the author beforehand that it holds a sitting.

Most of opposition lawmakers and independent observers said that this amendment annuls the obligation to broadcast live the plenary sittings of the Parliament on national radio and television. This supposition was confirmed by a developer of the draft law, Iurie Rosca, who said during debates that this amendment is needed to stop the abusive interventions of representatives of some parliamentary factions, to limit advertising and public appearance of representatives of some parties that did not participate in electoral race independently.

## **II. Weak motivation**

Following are the formal reasons invoked when the amendment was promoted: the need of "ensuring the budgetary austerity", "ensuring the accordance of legislation with provisions of the Broadcasting Code" and "ensuring equal conditions for electoral competitors during campaign for local elections," but these reasons are not considered plausible because a series of arguments combat them:

1. Budgetary funds are not very large even under conditions of "budgetary austerity" and in comparison with the annual budget of TeleRadio-Moldova Company (this budget exceeds 51.5 million lei in 2007). At the same time, the broadcasting on radio only would cost much less money. On the other hand, the launching of a cycle

of thematic broadcasts, introduction of new programmes to cover the air time on morning will produce expenses commensurable with those for live broadcasting.

2. Arguments regarding the "editorial and creative independence" ensured by new Broadcasting Code do not resist because:

- Both the broadcasting law (# 603/1995) and especially the law on national broadcasting company TeleRadio-Moldova (# 1320/2002) were earlier guaranteeing the "independence and creative freedom of the public broadcaster." These norms were in force when the mandatory live broadcasting of plenary sittings was introduced (April 2005) and we cannot believe that the Parliament, the electronic media watchdog CCA, the board of observers and the TeleRadio-Moldova administration could not observe eventual discordances and encroachments;
- The second part of the voted text says that the live broadcasting will be also decided "*with the vote of majority of present lawmakers,*" besides airing "in compliance with the Broadcasting Code." Or, the basic principle of legislation says that a law cannot be applied depending on "importance" of the debated problems, but it must be generally applied in all situations;
- Governor of the Administrative Territorial Unity Gagauzia has recently agreed with administration of the regional public broadcaster TeleRadio-Gagauzia to air live the sittings of the executive committee of the autonomy. This decision aims to "inform residents about actions taken by administration to create an attractive zone for investments with a minimum corruption rate in the region, for financial decentralisation and honest and fair elections. By broadcasting live the sittings of the executive, the administration wants a transparent activity and aims to involve the population in looking for solutions." Turkish investors are expected to help covering the imminent expenses. We note that representatives of the regional broadcasting did not see any violation of their editorial freedom and policy in the new obligations, while "interested" authorities have legal ways to negotiate and resolve the problem of complete and impartial coverage of its activity, if they do want this.

3. The legal initiative was not worked out as a response to argued appeals from CCA, the board of observers of TeleRadio-Moldova administration to invoke and argue the contradiction between the Broadcasting Code and the Parliament's Regulation, to indicate the limitation of "creative freedom" of the company and to recommend an appropriate amendment.

4. The Broadcasting Code contains certain direct or indirect regulations that allow and even recommend the live broadcasting of the Parliament's sittings:

- a. Article 2 (d) stipulates that the public broadcaster is the national or regional broadcasting institution with a status of public legal entity, *which serves the society, has an independent editorial policy, and the society supervises its activity.* It is hard to imagine a better way to serve the society but the direct and plenary information of society about activity of the supreme representative body and only legislative authority;
- b. Article 10 (Rights of consumer to broadcasts) stipulates that *the law guarantees the right to a complete, objective and true information, the right to free expression of opinions and the right to free communication of information via radio and television. Broadcasters are obliged to provide an objective information to broadcast consumer, favouring the free formation of*

*opinions.* The complete, objective and true information, the free formation of opinions are when "programmes are not edited and prepared", with the live broadcasting being freed of influenced interventions.

- c. Article 51 stipulates among attributions of TeleRadio-Moldova Company the *ensuring of the right to information of all categories of citizens of Moldova; favouring democratic debates, exchanges of opinions between diverse categories of population, as well as integration of citizens into society. The company holds the right to register or to broadcast live and free of charge the sittings of the Parliament, Government, and public debates of public authorities..., regardless of their place.*

5. The argument of "ensuring equal conditions during electoral campaign" is partly valid but it is combated by following findings:

- a. In order to ensure equal changes at elections, lawmakers should modify appropriately the Election Code and to establish the need of relieving the electoral candidates from offices even if they are members of the Parliament – the campaign for the 2007 local elections will last about 30 days for electoral competitors and the Parliament will hold 4 plenary sittings of several hours in this period, accordingly to a recently approved programme. Even if admitting that majority of lawmakers are relieved from offices and sittings lack the required cvorum, the suspension of parliamentary session for one month would not essentially deteriorate the situation in the country, with some issues from the programme being examined urgently, others postponed for the post-electoral period.
- b. The recent amendments to the Parliament's Regulation (Art.116–121) introduce some restrictions on conduct of lawmakers at sittings and establish a series of sanctions capable to reduce electoral promotion attempts (chairman of the sitting of majority of lawmakers may call for order, withdraw words, eliminate from sitting hall (with the help of some special forces), ban lawmakers who violate the regulations to enter the sitting hall).
- c. The Central Election Commission (CEC) has recently examined appeals from some political parties, which described the appearance of public servants on TV and statements they delivered during TV programmes as "electoral advertising and influencing of electors." CEC turned down the appeals, saying that some statements delivered during broadcasts, which also appreciated the political parties concerned, did not contain "elements of electoral propaganda."
- d. Parliamentary parties did not earlier "ensure equal conditions" for extra-parliamentary political colleagues; only parliamentary parties have dominant representatives in the Chamber of Auditors, CEC, CCA, etc. The concern with equity before elections raises some suspicions regarding sincerity of these statements.

### **III. Lack of alternatives**

Some important events deserve to be remarked in this context.

Firstly, the interested public was not proposed another way of access to public sittings:

- a. Free access to the sitting hall;
- b. Publishing of audio records of sittings on websites with several minutes before the end of the sitting;
- c. Online broadcasting of plenary sittings (the necessary equipment would cost maximum tens thousands dollars and international institutions which welcome such initiatives would sponsor the purchase);
- d. Creation of a parliamentary information channel (even for a charge, for all people willing to watch it), etc.

Secondly, Speaker Mariana Lupu invoked not very plausible technical reasons and a decision by an internal body of the Parliament and made the parliamentary majority turn down a proposal seeking a faster editing and publishing of records of plenary sittings on website (3–5 days would be enough for these procedures, especially because there are special programmes that allow the mechanical transcription of audio records and the audio text would be verified later with the written text).

Not the last, it should be noted that the Parliament's decision came with a couple of days before a new administration of TeleRadio-Moldova was elected and observers remarked a certain synchronisation of actions, saying that developers of this initiative were calm regarding the appointment of their candidates to leading posts.

We recall that the PPCD faction released a statement at the November 2, 2006 plenary sitting, regretting in connection with intention of the parliamentary majority to stop the live broadcasting of plenary sittings and noting that this is an "old and closed topic." According to the statement, the problem of long, repeat and groundless interventions is resolved through appropriate amendments to the Parliament's Regulation (these norms entered into force on March 23, 2007). Finally, the PPCD faction appeals to Vladimir Voronin as Moldovan president and leader of the ruling party to "use its authority and influence in order to maintain the live broadcasting of parliamentary sittings." The faction did not deliver statements at the March 23 sitting, with the PPCD leader speaking out as developer of the initiative and expressing opinions on behalf of himself and his party, not of the parliamentary party. It is worth to mention that PPCD Deputy Gheorghe Susarenco said that he will quit the party, if this draft law is voted, motivating his decision through the need of respecting the previous agreements ("*pacta sunt servanda*"); so the decision to back this draft was unanimous not even inside the parliamentary faction.

### **IV. Conclusions**

The new legal amendments did not immediately stop the live broadcasting of parliamentary sittings. Besides the fact that the law must be promulgated and published in order to enter into force, there are some issues that seem more interesting than the talks on conduct of the parliamentary coalition.

The broadcasting can be ceased under an internal act of the company adopted by its administration, but the decision in this respect of the board of observers must be also consulted beforehand.

Further, the new administration of the company must decide on this issue, in order to establish if it will ensure the live broadcasting and choose modalities, concrete days because ad-hoc decisions may be interpreted as an unfair selection of priorities and (local, partial, new, regional) elections may take place somewhere at that moment.

These situations will be a serious testing of implementation of the new Broadcasting Code, capacities and way that the board of observers and the new TeleRadio-Moldova administration consider that they should act, the way these entities perceive the "public interest". Indeed, this will be a test of independence and readiness of new structures of the national public broadcaster for transformations.

At the same time, this situation involves a new approach of proposals-conditions raised by constructive opposition during election of the chief of state and regarding functioning of the parliamentary political consensus. These proposals, which are just formally accomplished, are tested in terms of quality and effects of implementation and, for this reason, we could observe the revision of other stances in future. As the closest events are linked to the electoral campaign and the post-election period, we may see the Parliament revising the legal regulations on elections, on local public administration, if something goes wrong and the parliamentary coalition is affected.